

SUBJECT Licensing of audiologists and speech pathologists; the dispensing of
 hearing aids

COMMITTEE Health and Welfare

VOTE 9 ayes--Madla*, Delco, Glossbrenner*, Gonzales*, Miller*, Orr, Untermeyer,
 Vaughan, Von Dohlen*

 1 nay--Florence

 1 present, not voting--J. Wilson

 2 absent--Whitehead, Ezzell

WITNESSES For--Joe K. Longley, attorney, Texas Speech and Hearing Association
 Patricia Cole, speech pathologist, Texas Speech and Hearing Association

 Against--Ollie B. Livingston, Board of Examiners in the Fitting and
 Dispensing of Hearing Aids
 Dick Durbin, Texas Hearing Aid Association
 Several hearing aid specialists and dealers

 A number of people on both sides did not testify in the interest of time

DIGEST This bill requires licensing for speech pathologists and audiologists
 in certain instances by a new nine-member State Committee of Examiners
 for Speech Pathology and Audiology within the Department of Health
 Resources. Neither of these professions is now licensed by the state,
 nor are the terms "speech pathologist" or "audiologist" defined by
 statute.

 The new definition of audiologist includes, not only persons who make
 nonmedical evaluations or provide habilitative or rehabilitative
 services for people with hearing disorders, but also persons who use
 terms such as audiology, audiometrist and hearing center. A similar
 definition in the bill covers speech pathologists.

 Among the qualifications that must be met for the new license are:

 --a minimum of a master's degree from an accredited or approved
 college or university

 --30 graduate semester hours, at least 21 of which are in the
 specialization for which a license is sought

 --300 clock hours of supervised clinical experience

 --nine months of fulltime supervised professional experience

 --good moral character

 Once these requirements are met, candidates must also pass an examination
 administered by the Committee of Examiners.

Persons exempted from the licensing provisions include:

- teachers certified by the Central Education Agency, except when they engage in private practice for compensation
- students or interns in either of the two fields in supervised courses
- teachers in colleges and universities who do not supervise interns
- physicians or surgeons, or those supervised by them, who give hearing or speech testing or evaluation
- persons working for the Department of Health Resources
- persons who have completed TDHR hearing screening programs or persons in an industrial setting who only test hearing
- registered nurses who give speech or hearing sensitivity screening evaluations

Licenses may be denied, suspended or revoked for several reasons, including unprofessional conduct that has endangered the health, welfare or safety of the public, and violation of the code of ethics adopted by the Committee of Examiners or of any provision of this act. Additional grounds are the expiration of the time to appeal a conviction and the granting of probation when the adjudication of guilt is deferred. Convictions include pleas of nolo contendere and pleas of guilty on felony or moral turpitude charges.

The bill apparently does not interfere with persons licensed in other professions (persons licensed to fit and dispense hearing aids, physicians, etc.) and does not prevent a person from selecting, fitting, dispensing or selling hearing aids unless licensed by the Texas Board in the Fitting and Dispensing of Hearing Aids. The latter section differs from the original Senate version, which allowed persons licensed under this bill to select, fit and dispense hearing aids and which restricted fees to professional services only.

Grandfather provisions in the bill allow the committee to waive education, experience and licensing requirements for persons now practicing who meet certain educational and/or equivalent requirements and who file a license application within 90 days after the bill goes into effect. For example, licensing in another state with acceptable standards or receipt of the certificate of clinical competence of the American Speech and Hearing Association are acceptable.

Within three years of the bill's effective date, a continuing education requirement becomes effective and additional educational requirements are necessary for license renewal.

The bill sets maximum fees for application, examination and licensing. The proceeds are to pay the costs of the licensing committee. Start-up funds for the program are to come from general revenues. The fees will be handled through a speech pathology and audiology fund under the state treasury, and monthly reports of revenues will be made to the comptroller.

Violation of the act is a misdemeanor punishable by six months in jail and a fine of \$1,000. Civil remedies are available under the deceptive trade practices act against persons practicing without a license (if they are not otherwise exempt from licensing).

Other sections of the bill speak to administration of the Committee of Examiners and to appeals of committee orders. Under a sunset provision, the licensing statute expires Aug. 31, 1987.

PRO

The Texas Speech and Hearing Association supports the committee substitute, with one exception. Here is the association's argument:

Audiologists and speech pathologists are the only health care providers not licensed by the state. Regulation is necessary to protect consumers. All too often, a child has been treated for months with no improvement because an untrained practitioner made an improper diagnosis. In other instances, innocent families have been duped by shysters who simply hung out a shingle claiming they were speech clinicians or hearing therapists. Without licensing, injured persons have little or no remedies. They cannot even file claims under the Deceptive Trade Practices Act, since there is no legal definition of audiologists or speech pathologists.

Licensing will help guarantee that the public gets quality treatment, and this bill has safeguards against unnecessary bureaucracy or bureaucratic isolation. The licensing authority is placed under the Department of Health Resources; the fees are administered through the state treasury; and a sunset provision helps encourage integrity and efficiency in licensing. The Committee of Examiners can be abolished after the 10-year trial period, if not needed.

The definitions of speech pathologist and audiologist in the bill will help eliminate misleading advertising by unqualified persons.

The licensing procedures in the bill are similar to those in other states and in other professions. Uniform examinations insure consistency. Other provisions, such as the grounds for revocation of a license, try to maintain high professional standards. Persons convicted of felonies, for instance, are subject to discipline, no matter what the court punishment.

The bill exempts persons who meet other, existing standards, such as certification by the Central Education Agency. Other persons who are exempted must be supervised or are quite limited in their activities. And the grandfather provisions do not exempt all persons now practicing as speech or hearing therapists. Certain requirements can only be waived if equivalent standards have been met. The American Speech and Hearing Association, for example, has the same education and training requirements as the state licensure.

Even with the exemptions, however, enough persons will be licensed to make the committee self-sufficient after its first year of operation.

CSSB enjoys the support of several groups, including the Texas Association of Retarded Citizens, Texas Association of Children with Learning Disabilities, Easter Seal Society and Texas Association for Autistic Citizens.

As the bill stands now, no provision needs to be altered. This bill prohibits persons licensed under this act from fitting and dispensing as well as selling hearing aids. This changes current law. Audiologists can now fit and dispense hearing aids, so long as they receive payment only for their professional services. Poor people, in particular, benefit from this service, since they are not forced to pay an extra charge to the dealer for fitting. The bill should be amended to allow these licensees to fit and dispense the hearing aids.

CON

CSSB 440 is opposed by the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids and by persons licensed by that board. However, they favor one change in the committee substitute. Here are their arguments:

This bill is self-serving special interest legislation similar to bills defeated in the two previous sessions. Audiologists want state recognition so they can make more money, not because they are worried about the quality of patient care. If Medicare, Medicaid and various union programs start allowing third parties to provide hearing aids, these licensed audiologists stand to profit as distributors of these devices. Although they will only be able to sell the aids at cost, they will make a lot of money from professional fees. Shysters and untrained practitioners are rare. Nobody complained of mistreatment or deception at the public hearing on this bill.

This bill will simply restrict access to an overcrowded profession and make it harder for persons licensed by the Board of Examiners in the Fitting and Dispensing of Hearing Aids to maintain their share of the business. Industry requirements for education and experience are already so stiff that licensing of audiologists and speech pathologists is unnecessary. Anyway, this bill excepts more than half the practitioners in Texas. Why add to the bureaucracy? Especially since this agency may not even generate enough fees to be self-sufficient.

The grandfather clauses are also suspicious. One of them recognizes certification by a private professional organization as grounds for receiving a state license. If this association adopts weak standards, some professionals will get a free ride, while others will be forced to meet very stiff licensing tests.

The definitions of speech pathologist and audiologist are especially bad. A person licensed by the Board of Examiners in the Fitting and Dispensing of Hearing Aids, even if already a certified audiologist, could not use that copyrighted trademark or the technical terms of the trade without violating this act. If these definitions are enacted, the public will be discouraged from using established, reputable hearing aid dealers.

Audiologists should not be banned totally from dispensing hearing aids. They can already get a license to fit and dispense hearing aids, just like anyone else. Many audiologists already have licenses.

If CSSB 440 is passed, the present language on dispensing and sale of hearing aids should be retained. The state will wind up with a dual licensing authority if this bill allows licensing to dispense hearing aids.

Another possible objection to this bill, not raised by the hearing aid dealers, lies in the grounds for revoking a license. The bill allows the committee to discipline persons for legal offenses that have been wiped off a person's record--offenses punished by probated sentences, for example. If a person serves probation in an exemplary manner or has the indictment dismissed or the verdict set aside, that person can still be denied a license under this bill. To punish a person for an act that has been wiped from the record is an extreme, unfair procedure.

COMMENTARY Rep. Von Dohlen is expected to carry a floor amendment to restore a section on dispensing and selling hearing aids to its original form. His amendment will allow persons licensed under CSSB 440 to dispense, but not sell, hearing aids and to receive payment for their professional services.

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